

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF)	
)	DATE: October 29, 2002
Elizabeth Berke-Valencia)	
Special Assistant for Management)	
Support)	
Office of the Director)	DOCKET NO.: CF 2002-07
Department of Transportation)	

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report) (OIG Control Number 2001-0188 (S)). In the Report, the OIG has alleged that certain current and former employees engaged in behavior that violated provisions of the District of Columbia Personnel Manual Standards Of Conduct.

In the instant case, the OIG has alleged that Elizabeth Berke-Valencia (hereinafter respondent) engaged in private or personal business activity on government time and with the use of government resources on behalf of the private, non-profit Millennium Washington Capital Bicentennial Corporation (hereinafter MWCBC) in violation of §§1803.1(f), 1804.1(b)(d), 1805.2 and 1806.1 of the District Personnel Manual (hereinafter DPM).¹

¹ DPM §1800.1 reads as follows:

Employees of the District government shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

DPM §1803.1(f) reads as follows:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of the following:

...

(f) Affecting adversely the confidence of the public in the integrity of government.

DPM §1803.2(A) reads as follows:

District employees shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

- (a) Has, or is seeking to obtain, contractual business or financial relations with the D.C. government;
- (b) Conducts operations or activities that are subject to regulation by the D.C. government; or
- (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

DPM §1804.1(b) reads as follows:

An employee may not engage in any outside employment or other activity, which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include but are not limited to, the following:

...

(b) Using government time and resources for other than official business[.]

DPM §1806.1 reads as follows:

A District employee shall not use or permit the use of government property, equipment or material of any kind. . .for other than officially approved purposes.

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.² See D.C. Official Code §1-1106.01. Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated June 7, 2002, OCF requested the respondent to appear at a scheduled hearing on June 14, 2002. The purpose of the hearing was to show cause why the respondent should not be found in violation of the Standards of Conduct, which the respondent was alleged to have violated in the Report.

Summary of Evidence

The OIG has alleged that the respondent violated the above referenced provisions of the DPM as a result of her involvement with the MWCBC, which was a private, non-profit, tax exempt corporation that was used to generate funds for non-government activity. Consequently, the OIG has alleged that the respondent engaged in activity which was not compatible with the full and proper discharge of her responsibilities as a government employee and that her participation in specific Millennium-related activity created the appearance of an impropriety. The OIG relies exclusively upon its Report, which is incorporated herein in its entirety.

On June 14, 2002 the respondent appeared pro se before OCF at a scheduled hearing, conducted by William O. SanFord, Esq., Senior Staff Attorney. Wesley Williams, OCF Investigator, was also present.

² D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

Synopsis of Proceedings

The respondent is currently employed as a Special Assistant for Management Services in the Office of the Director of the Department of Transportation. She has occupied this position since November of 2001. Prior to this appointment, she was employed as an assistant to the Mayor's Deputy Chief of Staff for Operations, Mark Jones, from March until November 2000. She previously worked in the Office of the City Administrator, under Norman Dong, and the Office of Budget, when Anthony Williams was Chief Financial Officer and Dr. Abdusalam Omer was Director of Budget.

During direct examination by Mr. SanFord, the respondent testified that she was familiar with the Standards of Conduct as cited in the DPM. She further testified that she had read and understood the allegations against her in the Report.

The respondent was next asked whether she was familiar with the MWCBC and to explain her knowledge, if any, of the extent of her involvement therein. The respondent conceded that she had engaged in activity on behalf of MWCBC pursuant to being approached by her then supervisor, Lisa Marie Morgan (Morgan). However, the respondent stated that she was not aware that the duties she was asked to perform constituted violations of the Standards of Conduct. Respondent testified that throughout her involvement with MWCBC that she kept her supervisor informed of the work she performed in a manner consistent with any other assignment she received.

She stated that on or about June 6, 2000, she attended a meeting with then Deputy Chief of Staff, Mark Jones (hereinafter Jones), his assistant, Thomas Tucker (hereinafter Tucker), and three attorneys from the Office of Corporation Counsel (hereinafter OCC), in which the attorneys advised her, Jones and Tucker that they were prohibited from working on matters on behalf of a non- governmental entity. She continued that, pursuant to that meeting she began to curtail her MWCBC activity; and, that she officially resigned her position as Assistant to the Deputy Chief of Staff on November 1, 2000 because she was afraid that her continued employment in that environment could ruin her career.

She admitted that she used government facilities and government resources on behalf of MWCBC and insisted that her actions were pursuant to assignment from her superiors. She also admitted to having signature authority on an MWCBC account. Additionally, she admitted to signing checks written on that account. However, the respondent testified that she did not believe it was inappropriate to have signature authority on an MWCBC account because several other government employees, including her then supervisor, Morgan, had signature authority, too.

The respondent testified that she never held an interest, financial or otherwise in the MWCBC, and she did not believe or understand that her MWCBC-related activity at

anytime interfered with or was inconsistent with her role as a government employee in light of the fact that she performed the duties, pursuant to assignment from her superiors.

According to Mr. SanFord, the respondent expressed general disappointment in her former superiors whom she relied upon for guidance in this matter. However, by her own admission, she continued to perform work on behalf of MWCBC for approximately five months subsequent to being advised by OCC during a June 6, 2000 meeting, that it was inappropriate for government employees to perform work on behalf of a non-government entity.

Findings of Fact

Having reviewed the allegations and the record herein, I find:

1. Respondent, Elizabeth Berke-Valencia, as an assistant to Mark Jones (hereinafter Jones), the Mayor's Deputy Chief of Staff for Operations, from March until November 2000, was a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. MWCBC was incorporated in October 1999 under the auspices of McCall, then EOM Deputy Chief of Staff for External Affairs, as a private, non-profit corporation to solicit donations for the 2000 millennium celebration in the District of Columbia. Report at 50-51.
3. From November 1999 through the middle of January 2000, MWCBC operated out of the EOM office located at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. Report at 50-51 & 59.
4. From the middle of January through July 2000, MWCBC operated out of 1730 K Street, N.W. and was still supported by D.C. government funds and resources. Report at 59, 62 & 65.
5. From July through November 2000, MWCBC operated, once again, out of the EOM office located at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. Report at 65 & 67.
6. There were two (2) MWCBC accounts. Report at Exhibit 1.
7. Throughout her tenure as an assistant to the Mayor's Deputy Chief of Staff for Operations, the respondent received assignments from her supervisor, Lisa Marie Morgan (hereinafter Morgan), to perform tasks involving MWCBC activities, including signature authorization on an MWCBC account.

8. From or about March through July 2000, the respondent wrote at least 165 checks on one of the MWCBC accounts. Report at Exhibit 1.
9. On or about June 6, 2000, the respondent, Jones, and his assistant, Thomas Tucker (hereinafter Tucker), were informed by OCC staff that they were prohibited from performing tasks on behalf of a non-governmental entity.
10. The respondent continued to perform tasks with regard to MWCBC until November 2000, when she became fearful for her career as a result of her continued duties with regard to MWCBC.
11. The respondent nevertheless believed that that it was not inappropriate to perform tasks and sign checks with regard to MWCBC because several other government employees, including her supervisor, Morgan, were performing tasks with regard to MWCBC.
12. The respondent also believed that her MWCBC related activities did not interfere and were not inconsistent with her role as a government employee because she performed these activities pursuant to assignments from her superiors.
13. There is not any evidence to suggest that the respondent was authorized by the Office of the Chief Financial Officer or the D.C. Treasurer or their designees to oversee financial accounts and sign checks inuring to the benefit of the District of Columbia.

Conclusions of Law

1. Respondent is an employee of the District of Columbia government and is subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. From March through November 2000, MWCBC, notwithstanding that it was a private, non-profit corporation, was supported by D.C. government employees, funds and resources; and, the respondent believed that MWCBC business was government business.
3. Respondent used District of Columbia government time and resources to perform extensive tasks with regard to an MWCBC account from March through November 2000; and, notwithstanding the fact that respondent was directed by her supervisors to perform said tasks, it is more likely than not that the respondent was well aware that her actions violated the employee conduct regulations because respondent signed at least 165 checks over an MWCBC account and in June 2000, respondent was informed that her conduct

was prohibitive.

4. Checks issued for District of Columbia government business emanate from District of Columbia government accounts managed and processed by the Office of the Chief Financial Officer (hereinafter CFO) through the D.C. Treasury. See D.C. Official Code §§1-204.24a et seq. (2001 Edition).
5. Respondent's management of an MWCBC account over which she signed at least 165 checks; and, notwithstanding that the purpose and proceeds thereof ostensibly inured to the District of Columbia government, was private, corporate business and none of the transactions were processed through the D.C. Treasury.
6. Respondent's management of an MWCBC account over which she signed at least 165 checks; and, notwithstanding that the purpose and proceeds thereof ostensibly inured to the District of Columbia government, was not government business.
7. The responsibility for enforcing the provisions of the employee conduct rules against the respondent rests with the Director of the Department of Transportation.

Recommendation

I recommend that the Director advise the Director of the Department of Transportation to admonish Elizabeth Berke-Valencia for her prohibitive conduct. Moreover, I further recommend that the Director advise the Director of the Department of Transportation to require Elizabeth Berke-Valencia to participate in any ethics meetings and workshops, scheduled by the District Government to become closely familiar with the provisions and prohibitions of the Standards of Conduct.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that the Director of the Department of Transportation be advised to admonish Elizabeth Berke-Valencia for her prohibitive conduct.

IT IS FURTHER ORDERED that the Director of the Department of Transportation be advised to require Elizabeth Berke-Valencia to participate in any ethics meetings and workshops scheduled by the District Government to become closely familiar with the provisions and prohibitions of the Standards of Conduct.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

Parties Served:

Elizabeth Berke-Valencia
2232 12th Place, N.W.
Washington, D.C. 20009

Charles Maddox, Esq.
Inspector General
Office of the Inspector General
717 14th Street N.W., 5th Floor
Washington, D.C. 20005

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

S. Wesley Williams
Investigator

NOTICE

Pursuant to 3 DCMR § 3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this Order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C. 20009.